

**John F. Doyle
v.
Division of Insurance**

Decision and Order

Introduction and Procedural History

On or about February 9, 2004, John F. Doyle filed with the Division of Insurance (“Division”) a notice of claim for an adjudicatory proceeding in which he appealed the denial of his application to act as an agent for a foreign fraternal benefit society, the Knights of Columbus. I was designated as presiding officer. A notice of hearing issued on February 27, 2004, scheduling a prehearing conference for March 25, and a hearing for April 8. The notice stated that the hearing would be conducted in accordance with G. L. c. 30A and the Standard Adjudicatory Rules of Administrative Practice and Procedure, 801 CMR 1.00 *et seq.* On March 19, the Division filed as its answer the January 15, 2004 letter from John Curran, Supervising Examiner, denying Doyle’s application (hereinafter, “January 15 Letter”). At the request of the parties, the prehearing conference and hearing were continued to March 26, and April 9, respectively. James C. Doyle, Jr., Esq., appeared on behalf of John Doyle; Joseph Sullivan, Esq. represented the Division.

The January 15 Letter denied Doyle’s application for his failure to meet the standards of trustworthiness and competence required by G.L. c. 176, §35 (4)(d), and specifically cited two grounds: 1) Doyle had been convicted of a conspiracy to make and cause to be made false statements on mortgage loan documents for the purposes of influencing the actions of ComFed Savings Bank, a felony offense; and 2) he failed to

disclose in his answer to Question 13 on the application that his license to practice law had been indefinitely suspended.

Doyle's claim for an adjudicatory proceeding gave a single basis for his request: that "checking NO on Question 13 was an inadvertent error and not meant to conceal my suspension."

Evidence Presented.

At the hearing, the Division presented no witnesses, but offered five exhibits:

Exhibit 1. Application for license to act as an Agent for Foreign Fraternal Benefit Society submitted by John F. Doyle, together with letter dated November 11, 2003, from Michael R. Capobianco to S. Rosenbloom, Division of Insurance.

Exhibit 2. Letter from John M. Curran to John F. Doyle dated January 15, 2004, denying the application to act as agent for a foreign fraternal benefit society, the Knights of Columbus, and enclosing an appeal form.

Exhibit 3. Certified copy of records relating to: *United States of America v. John F. Doyle*, U.S. District Court No. 95-10183RGS.

Exhibit 4. Letter from Donald K. Stern, U.S. Attorney, to William York, Esq., dated May 16, 1995, *United States of America v. John F. Doyle*, DOJ Number 29-36-1180-32, Confirmation of Plea Agreement.

Exhibit 5. Hearing Panel Decision, Board of Bar Overseers of the Supreme Judicial Court, BBO File No. C2-95-0255, *Bar Counsel v. John F. Doyle*, December 24, 1996.

Doyle objected to the relevance of the documents offered as Exhibits 3, 4, and 5. He argued that he does not dispute the fact of his conviction, and that the focus of the hearing should be on the question raised by his appeal, *i.e.*, whether his error in answering "no" to Question 13 was intended to mislead the Division. After hearing arguments from the parties, I ruled that the documents were relevant to the issues presented by the appeal. The issue raised by Doyle goes to the weight of the evidence offered, rather than its admissibility. Doyle did not dispute the authenticity of the documents, and I allowed their introduction. The Division presented no witnesses.

Doyle testified in his own behalf, and also presented the testimony of Michael R. Capobianco, General Agent for the Knights of Columbus, and Michael Keefe, Esq. He also offered a series of letters describing his community service, and his work experience since the time of his conviction.

Doyle stated that he sought to make adequate disclosure on the application, and that the incorrect answer was due to an oversight. He stated that the application was initially completed by Mr. Capobianco during a telephone conversation with him, and that when he later signed the application he did not carefully review all of the questions. He testified that he spent a considerable amount of time focusing on Question 14, which asked whether the applicant had ever been convicted of, or arrested for, or convicted of, any crime. The affirmative answer and explanation he gave to that question, he testified, was complete, and demonstrates his good faith. Doyle testified that his goal was to make full and complete disclosure, and that he considers it unfortunate that he made this mistake, as he had never disclaimed responsibility for his actions, and that he has been, consistently, forthright about his criminal history.

Mr. Capobianco, who serves as the hiring agent for the Knights of Columbus, testified in support of Doyle's application. He testified that Doyle was candid with him about his criminal history, and that the application was reviewed by the Knights of Columbus with full knowledge of Doyle's criminal history. He testified that Doyle has an outstanding reputation within the organization's membership, and that they would welcome him as an agent. He also corroborated Doyle's testimony about the circumstances of completing the application.

Mr. Keefe testified that he is an attorney licensed to practice in Massachusetts, and a long-time member of the Knights of Columbus. He testified that he has known Doyle for his whole life, and considers him to be an extremely trustworthy person. Keefe spoke, as well, about Doyle's community activities, and his activities within the Knights of Columbus.

Doyle also offered a series of documents into evidence. The exhibits introduced by Doyle are:

Exhibit 6. Letter of Recommendation dated April 8, 2004, from John D. Leone, Esq.

Exhibit 7. Letter of Recommendation dated April 8, 2004, from George Kenney.

Exhibit 8. Letter of Recommendation dated April 5, 2004, from Eugene B. Foley.

Exhibit 9. Facsimile, Letter of Recommendation from John F. Cusack, undated, submitted April 9, 2004.

Exhibit 10. Letter of Recommendation dated April 5, 2004, from Gordon S. Scott, Search Research Services.

Exhibit 11. Letter of Recommendation dated April 8, 2004, from John Griffin, Bedford Housing Authority.

The authors of these letters describe the length of time and the professional and personal contexts in which they have known Doyle. The writers include other attorneys, colleagues from public service positions in the Town of Arlington, and fellow members of the Knights of Columbus. Most state specifically that they are aware of Doyle's conviction, but that they nevertheless consider him to be a person of high moral character. Collectively, they spoke of his continued public service and extensive charitable work.

Arguments of the Parties

On April 20, the Division submitted its post-hearing memorandum; Doyle submitted his memorandum on April 22.

The Division argues that the Division acted properly to deny Doyle's license application, and that his lack of trustworthiness and competence is demonstrated by both his felony conviction and his failure to disclose his indefinite suspension from the practice of law. The Division points out that Doyle's conviction was for a crime involving dishonesty and fraud committed in the course of acting as attorney for a savings bank, specifically, preparing settlement statements which showed that cash deposits had been made when, in fact, they had not. It argues that Doyle's behavior was significant in that he was acting as an attorney for the bank, and thereby breached his duty of loyalty to his client. The Division points to a line of cases in which the Commissioner has held that it acted correctly in denying license applications on the basis of criminal convictions, and that public confidence in the integrity of licensees depends upon careful review of applicants. It argues that Doyle's expression of regret for his actions is insufficient to establish that he now possesses the requisite qualities of trustworthiness and competence.

The Division argues, further, that Doyle's failure to disclose his suspension from the practice of law independently demonstrates his lack of trustworthiness and suitability, and that he bears a heavy burden in demonstrating that he is now trustworthy. It also argues that Doyle's failure to disclose that suspension demonstrates that he currently lacks the requisite qualities of trustworthiness and competence. The Division points out that the application was signed under the pains and penalties of perjury, and analogizes the facts

presented here with those presented in *Voronov v. Division of Insurance*, Docket No. E91-05.

Doyle argues that the question is not whether he was convicted of a crime, but whether he is currently trustworthy and competent to be an agent for a fraternal benefit society. He argues that his license application was denied after a cursory evaluation, in which the Division did not even seek to speak to his character witnesses. He argues that he has complied with all aspects of his sentence, and has been on release from probation. He argues, further, that since his release from probation he has been entrusted with positions with increasing responsibility, and has assembled a spotless record.

Doyle argues, further, that an affirmative answer to Question 14 should not, by itself, be a bar to licensure, as that would contravene the important principle of rehabilitation of those with a criminal record, and cites *Foster v. The Loft, Inc.*, 26 Mass. App. Ct. 289 (1988). He argues that the conduct for which he was convicted took place more than 15 years ago, and that the current testimony in support of his trustworthiness should be heavily weighted. He concludes that he is well qualified to sell insurance, and that his request for an application should have been granted.

Discussion and Analysis

The Division concluded, based on two grounds, that Doyle did not possess the trustworthiness and competence required to serve as an agent for a fraternal benefit society. One of those grounds is not disputed: that Doyle has been convicted of the federal offense of conspiracy to make and cause to be made false statements and reports upon mortgage loan documents for the purpose of influencing the actions of ComFed Savings Bank, in violation of 18 U.S.C. § 1014. The second basis for the Division's conclusion was Doyle's failure to identify on his application that he had been suspended from the practice of law. Doyle does not dispute that he was and remains suspended from practice, but asserts that the omission was unintended.

Chapter 176, §35 (4)(d) provides that the commissioner may refuse to issue or renew any insurance agent's license if in her judgment the proposed licensee is not trustworthy and competent to act as such agent, or has given cause for revocation or suspension of such license, or has failed to comply with any prerequisite for the issuance or renewal, as the case may be, of such license.

There is no dispute about the essential facts upon which the Division's action was based. In furtherance of a marketing scheme for a condominium conversion project, Doyle notarized mortgage application documents which failed to disclose the true financial condition of the mortgagee. In June, 1995, Doyle entered a guilty plea on one count of conspiracy, in violation of Title 18, U.S.C. § 371. He was sentenced to probation, with 200 hours of community service, and ordered to make restitution. Thereafter, the Board of Bar Overseers of the Supreme Judicial Court of the Commonwealth of Massachusetts indefinitely suspended Doyle from the practice of law. Doyle's response to Question 14 on the licensing application does make disclosure of the conviction, but in answering Question 13 he did not disclose his suspension from the practice of law.

By itself, Doyle's conviction offers a sufficient basis for denying a license application. A goal of the licensing process is to ensure public confidence in the integrity of those who are approved to service and sell insurance in Massachusetts. The granting of a license to one who has been convicted of a felony should be done cautiously, and the Division appropriately considered that fact in determining that Doyle's application should be denied. Although a conviction does not represent a lifetime bar to licensure, the Commissioner is entitled to take the seriousness of the actions into account, as well as factors in mitigation. The principal doctrine enunciated in the case Doyle cites on this issue, *Foster v. The Loft, supra*, is that "an employer whose employees are brought in contact with members of the public in the course of the employer's business has a duty to exercise reasonable care in the selection and retention of his employees." *Id.* at 290. Although the decision notes that public policy favors rehabilitation of those with criminal records, it does not suggest that a criminal record is irrelevant to the question of suitability for employment. Further, the issue presented in that case was not licensure, but negligent hiring. Massachusetts has consistently recognized the fundamental issues of public trust and safety which much be considered in determining whether to grant a license to an individual. See, e.g., *LeDuc v. Commonwealth*, 421 Mass. 433, 435 (1995), *Levy v. Board of Registration and Discipline in Medicine*, 378 Mass. 519, 527-528 (1979). For these reasons, I find that the Division's decision should be upheld. I find, as well, that denial of Doyle's license application is consistent with actions that the Division has taken in the past. See, e.g., *Janeczek v. Division of Insurance*, Docket No. E96-05; *Swartz v. Division*

of Insurance, Docket No. E95-11; *Division of Insurance v David*, Docket No. E94-20, aff'd on appeal, *David v. Commissioner of Insurance*, 53 Mass. App. 162 (2001).

With respect to the second issue, whether Doyle deliberately failed to disclose his suspension from the practice of law, his argument is, in essence, that this was an inadvertent error rather than a deliberate attempt to deceive, as shown by his forthrightness about his conviction, and his inclusion of significant information about the circumstances of that event. Although there is some merit to his argument that the disclosure of the conviction demonstrates that this omission was an error, I do not find that argument fully persuasive. There is a substantive difference between the conviction and the action by the Board of Bar Overseers: the first depends upon the determination of specific facts, the second is a determination of character and suitability. The licensing determination by the Board of Bar Overseers is clearly relevant to the questions to be addressed by the Division in making its own licensing determination, particularly where, as here, the license at issue was that which facilitated the criminal conduct. Even accepting Doyle's argument that his failure to disclose the license suspension reflects inattention rather than a deliberate attempt to mislead, he is ultimately responsible for the accuracy of the information he submits. More significantly, however, the Division's position is grounded not only in the omission of the information about disbarment, but also in the felony conviction, which Doyle does not dispute.

IV. Conclusion

For the above reasons, I find that the evidence supports the decision to deny John F. Doyle's application for a producer's license. I therefore deny his appeal and uphold the Division's denial of his application.

So Ordered.

Dated: August 2, 2004

Susan G. Anderson, Esq.
Presiding Officer

Pursuant to G.L. c. 26 §7, this decision may be appealed to the Commissioner of Insurance within three days.